

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

OCT 09 2013

LAWRENCE K. BAERMAN, CLERK
ALBANY

UNITED STATES OF AMERICA
Plaintiff

Case No.: 1:12-CR-579

v.

**ANSWER IN THE NATURE OF A
COUNTERCLAIM TO
GOVERNMENT'S RESPONSE
IN OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS INDICTMENT**

GLENN R. UNGER
Defendant

COUNTERCLAIM

The Clerk of Court having possession of the surety's bond and thereby actual knowledge of this counterclaim by which the surety has secured the contract and is entitled to enforce its undisputed right of recourse on the payment, the Clerk also possessing notice of the Surety's right of lien against the Court Bond (CUSIP No. 466000759, see attached UCC3) comprising recall of said Bond, the Court is hereby obligated to perform on the counterclaim. Further,

In Government's response GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT (Document No. 39), Plaintiff has once again failed, and has stipulated to such failure, to state a claim upon which relief can be granted, prove that it has exhausted its administrative remedy prior to filing civil action at the administrative Court, or exhibit a contract, breach, injured party, lien or security interest which would obligate Defendant to perform. The Government's attempt to obfuscate such shortcomings through its citations borders on being unintelligible.

Plaintiff, having failed to verify the said response, has failed to rebut the said petition to dismiss (Document No. 38) and supportive affidavit. Unverified statements of counsel lack sufficient weight to overcome affidavits of record.

In effect, the Government's counsel has alleged facts on the record constituting testimony not under oath; such statements should be stricken from the record as they do not constitute facts or evidence in the instant matter. If counsel wishes to testify to facts, counsel must be sworn in and properly deposed or submit a verified affidavit at full personal liability. This is especially true regarding citizenship and residency. The Court may not conclude that Defendant is a U.S. citizen or resident unless counsel for the Government testifies to this theory under oath subject to the pains and penalties of perjury, and proves such testimony with factual evidence. The Court, as an operation of law, has no inherent power or authority to render such a conclusion *sua sponte*.

The Court is limited by this same doctrine from considering any of counsel's other unverified representations regarding documents, alleged evidence of wrongdoing, and allegations regarding unsupported theories of the Defendant's involvement, motivations and future behaviors.

FACTUAL CONCLUSIONS

Notwithstanding the Government's unsupported theories regarding citizenship and residency, the Government has again failed to provide the Court with a single piece of evidence. As the Government has once again come to the Court empty-handed and unverified, again we ask: Where is the contract, lien or consent? Where is the Government's evidence of citizenship and residency? Where is the Government's claim obligating the Defendant to perform upon which relief can be granted?

Absent such claim, the Court's hands are tied and it may not ethically move the prosecution forward other than by fraud even under color of law.

The Court, having firsthand knowledge of the counterclaim and no knowledge of Plaintiff's statement of claim, and having possession of an unrebutted petition to dismiss and knowledge of the Surety's right of lien against the Court Bond, is hereby moved to forthwith terminate the ongoing Trespass against the Trust estate, execute disposition on the surety bond, fulfill the contract, and grant the said petition to dismiss and relief noted therein. Failure to so act will cause injury and hardship for Defendant, a liability collectible from the Payer in possession of the outstanding Federal withholding tax on the unrequited barter and acquisition.

Negative averment by the Government does not and cannot comprise a statement of claim upon which relief can be granted nor proof of citizenship or residency.

Solemnly declared and affirmed this 8th day of OCTOBER, 2013.

GLENN RICHARD UNGER ESTATE

By: GLENN RICHARD FAMILY UNGER EX

GLENN RICHARD FAMILY UNGER EX
EXECUTOR

Solemnly affirmed and subscribed this 8th day of
October, 2013. WITNESS my hand and seal:

By: [Signature]

Notary Public

Seal:

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Paul B. Culp Jr., Notary Public
Bedminster Twp., Bucks County
My Commission Expires April 14, 2016

MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES